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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 352

JOHN N. STICE,
Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF KANSAS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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The petitioner seeks a writ of certiorari to the Supreme Court of Kansas to review the order of that Court entered February 28, 1969, denying his application for reinstatement and readmission to the bar of the state of Kansas.

OPINIONS BELOW

The order of the Kansas Supreme Court denying reinstatement appears in the record at page 32 and is printed in the appendix to the petition. The report of the State Board of Law Examiners to that Court on petitioner's application is printed in the record beginning at page 7 and likewise appears in the appendix to the petition. This report includes, as attachments, the majority and dissenting opinions of the three-member panel appointed to hear the evidence regarding petitioner's application.

JURISDICTION

The petitioner seeks to have this Court accept jurisdiction under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Is a standard for readmission to the bar requiring "clear and convincing" evidence of rehabilitation of moral character after disbarment consistent with the requirements of due process?

2. Can the petitioner ask this Court to review the evidentiary support for the finding below against him, when he has not included in the record before the Kansas Supreme Court or this Court any of the evidence received at the hearing on his application for readmission?

RULE INVOLVED

Rule No. 208 of the Kansas Supreme Court, relating to reinstatement procedure, is printed in the appendix to the petition.

STATEMENT OF FACTS

The petitioner John N. Stice was disbarred in the Supreme Court of Kansas on May 16, 1959. *In re Stice,* 184 Kan. 589, 339 P.2d 29 (1959). See also *State ex rel.* v. *Stice,* 186 Kan. 69, 348 P.2d 833 (19....). The Court's opinion discloses the findings against him in that proceeding. Thereafter he filed three applications with the Court for reinstatement, all of which were considered by the Court and denied without hearing or opinion. On May 21, 1968, the Court adopted new and revised rules relating to the discipline of attorneys. 201 Kan. XLVII. When petitioner filed his present application for reinstatement in June of 1968, the Court, pursuant to its new rules, referred the application to the State Board of Law Examiners. Also pursuant to these rules, the Board assigned a three-member panel to conduct a hearing, which was had on September 4, 1968. At this hearing the petitioner appeared in person and presented evidence. An assistant attorney general appeared in opposition to reinstatement and also presented evidence, both testimonial and documentary. Thereafter the panel voted two-to-one against reinstatement. The majority's report to the full Board, as well as the dissenter's opinion, appear in the appendix to the petition for certiorari. The full Board, on February 10, 1969, adopted the majority opinion and made its report to the Court, recommending that the Court deny the petition for reinstatement. (R. 7). Its report likewise appears in the appendix to the petition. The court denied the application in a brief order on February 28, 1969.

Rule No. 208 of the Kansas Supreme Court (see Appendix to petition) provides that upon request of the petitioner for reinstatement and payment of the actual costs thereof, the Board shall certify to the Court the complete record of the proceedings had on the application for reinstatement.

The petitioner never did this in the present case, and consequently the evidence heard by the three-member panel of the Board was not before the Supreme Court. Likewise, this evidence is not part of the record in this Court.

REASONS CERTIORARI SHOULD BE DENIED

The Kansas Standards for Readmission After Disbarment Are Reasonable and Do Not Contravene Due Process.

The opinion by the majority of the hearing panel, which was adopted by the full Board and apparently by the Supreme Court, states that the standard which it is applying is "that the *former adverse adjudication of applicant's character must be overcome by clear and convincing evidence.*" This standard is in turn based on Rule 208 of the Kansas Supreme Court (See appendix to petition) which provides that "the burden shall be upon an applicant seeking reinstatement to establish the averments of his application by clear and convincing evidence." The same rule also provides that a petition for reinstatement "shall set forth facts showing that the attorney has rehabilitated himself, or that he is entitled to have the order of discipline vacated, terminated or modified." Applying this standard, the majority of the hearing panel said in its opinion that "the evidence falls far short of establishing clearly and convincingly a present moral character of the kind required of one who is to be vouched for by the Supreme Court as fit for a position of trust and confidence." The majority repeated this standard once again in its final findings and conclusions.

Petitioner suggests that the Kansas Supreme Court requires "overwhelming proof" by a petitioner for reinstatement. However, he lifts this phrase out of context from a quotation in the majority opinion from a 1927 California case. It is apparent from an examination of the

majority opinion that this phrase by itself was not made the standard by which petitioner's evidence was judged. Petitioner also suggests that the Kansas Court required that he confess to his guilt of the charges made in 1959 before he could be reinstated. However, while it is clear that the majority considered lack of repentance to be relevant, it is also clear that it did not consider this to be the controlling standard. The controlling standard was clear and convincing evidence of rehabilitation of petitioner's moral character. After all, paragraphs two and three of the petition for readmission itself allege petitioner's rehabilitation and repentance as grounds for readmission. The petitioner has never attempted in this proceeding to rebut the evidence supporting his disbarment ten years ago.

The controlling standard applied in petitioner's case, then, was a reasonable one and raises no question of procedural due process. It does not run afoul of the holding of *Spevack* v. *Klein*, 385 U.S. 511 (1967), that the self-incrimination clause of the Fifth Amendment has been absorbed in the Fourteenth and protects lawyers as well as other individuals, and that disbarment may not be imposed as the price of asserting it. Respondent has no quarrel with this principle, nor with the holdings in the other two cases cited by petitioner: *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957), and *Re Ruffalo*, 390 U.S. 544 (1968). The *Schware* case holds that:

> A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. . . . Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible

> standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. . . . (253 U.S. at 239).

The Kansas standard requiring clear and convincing evidence of rehabilitation of moral character clearly has a rational connection with the fitness of petitioner to be readmitted to the Kansas Bar. The *Ruffalo* case deals with the due process requirement of notice and has no application here.

This Court has previously recognized the importance of leaving states free to select their own bars, so long as this power is not exercised arbitrarily or in a discriminatory manner or in a way to impinge upon freedom of expression or association. *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 273 (1957). In the present case, the state standards for judging fitness for readmission to the Bar fall well within these limitations.

Nor can it be suggested here that there is no reasonable basis in the record for the finding that petitioner failed to satisfy the standard of clear and convincing evidence of rehabilitation. *Cf. Schware* v. *Board of Bar Examiners, supra.* The record before the Supreme Court of Kansas and in this Court simply does not contain the evidence heard by the three-member panel. Although the petitioner had a right under the rules of the Kansas Supreme Court to include all of this evidence in the record he elected not to do so. Under these circumstances, he may not be heard to complain that the record does not support the findings against him.

CONCLUSION

For the above reasons, the claims of petitioner that he was denied due process are wholly insubstantial and the writ of certiorari should be denied.

Respectfully submitted,

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